

MEMO ENDORSED



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF ECONOMIC JUSTICE
ANTITRUST BUREAU

August 27, 2021

By ECF Filing

Hon. Denise Cote
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: FTC, et al. v. Vyera Pharmaceuticals, LLC, et al., No. 20-cv-00706 (DLC)

Dear Judge Cote,

The Plaintiff States respectfully requests permission to file under seal documents in connection with the Plaintiff States' opposition to defendants' motion for summary judgment, including exhibits to a declaration in opposition to the motion, as well as quotations from those documents in the memorandum of law and in the Local Rule 56.1 statement of facts.

Pursuant to the Court's September 16 and September 17 orders (ECF 261 & 266), the Plaintiff States asked Defendants whether we should seek to file any of our exhibits under seal, and if so, to include proposed findings to justify any sealing. Defendants responded as follows:

With Respect to Exhibit 1:

Please file under seal. This document is a commercial agreement between Vyera Pharmaceuticals, LLC and one of its distributors. It contains commercially sensitive information that has not been released into the public domain, and thus qualifies as "Confidential Material" under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 2:

Please file under seal. This document is a commercial agreement between Vyera Pharmaceuticals, LLC and one of its distributors. It contains commercially sensitive information that has not been released into the public domain, and thus qualifies as "Confidential Material" under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 3:

Please file under seal. This document is a commercial agreement between Vyera Pharmaceuticals, LLC and one of its distributors. It contains commercially sensitive information that has not been released into the public domain, and thus qualifies as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 4:

Please file under seal. This document is a commercial agreement between Vyera Pharmaceuticals, LLC and one of its distributors. It contains commercially sensitive information that has not been released into the public domain, and thus qualifies as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 5:

Please file under seal. This document is a commercial agreement between Vyera Pharmaceuticals, LLC and one of its distributors. It contains commercially sensitive information that has not been released into the public domain, and thus qualifies as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 7:

Please apply the attached redactions. The redacted portions of this document reflect commercial or business information that is commercially sensitive that has not been released into the public domain, and/or personal identifying information (including personal cell phone numbers), and thus qualify as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 12:

Please apply the attached redactions. The redacted portions of this document reflect commercial or business information that is commercially sensitive that has not been released into the public domain, and thus qualify as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 13:

Please apply the attached redaction to 258873. The redacted portion of this page reflects commercial or business information that is commercially sensitive that has not been released into the public domain, and thus qualifies as “Confidential Material” under the terms of the Stipulated Protective Order. Please file the remainder of this document, which is Vyera Pharmaceuticals LLC’s commercial contract with an API supplier, under seal. It contains commercially sensitive information that has not been released into the public domain, and thus qualifies as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

With Respect to Exhibit 17:

Please apply the attached redactions. The redacted portions of this document reflect commercial or business information that is commercially sensitive that has not been released into the public domain, and thus qualify as “Confidential Material” under the terms of the Stipulated Protective Order. See ECF No. 92.

To the extent that the Plaintiff States used nonpublic information and materials in the opposition to the summary judgment motion, we also filed them under seal, or redacted, for the reasons Defendants listed above, or because they are third party materials. In accordance with Rule 7.B of Your Honor’s Individual Practices in Civil Cases and with the requirements for electronically filing under seal, the Plaintiff States will publicly file redacted versions of our memorandum of law in opposition, declaration and Local Rule 56.1 statement.¹

Respectfully submitted,

/s/ Jeremy Kasha

Jeremy R. Kasha
Assistant Attorney General
Antitrust Bureau

On behalf of New York and all Plaintiff States

cc: Counsel of Record (by ECF filing)

The requests to redact and to seal are approved.

Dated: August 31, 2021



DENISE COTE
United States District Judge

¹ Plaintiff States apologize for not being able to fit the content of this letter-motion into 2 pages, on account of the volume of materials and defendants’ responses. We respectfully ask the Court for permission to submit this motion in 3 pages.